

### **REMARKS/ARGUMENTS**

Restriction of the claims has been required under 35 U.S.C. 121 between Group I, including claims 1-8 drawn to a method and Group II, claims 9-15 drawn to an apparatus. In this regard, the Examiner has stated that "the apparatus as claimed can be used to practice another and materially different process i.e. the apparatus of Group II as claimed can be used to practice another and materially different process i.e. without placing pressure bars between the boxes and walls.

In response, the applicants have amended claim 1 to delete the step of placing pressure bars between the boxes and walls. Accordingly, the applicants believe that the invention of Group I and II are no longer distinct in that the apparatus as claimed in Group II can no longer be used to practice another and materially different process from that recited in Group I. The applicants therefore request a withdrawal of the restriction requirement and the return of withdrawn claims 1-8 to those claims being prosecuted. Further, the applicants request that the Examiner consider the applicant's comments with respect to claims 9-15 as equally applicable to claims 1-8.

Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claims 9 and 13 have been amended to overcome these objections.

Claims 9-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al (U.S. 6,012,384) in view of Briscoe Jr. et al. (U.S. 6,390,378). Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al in view of Briscoe Jr. et al and further in view of Hearne Jr. (6,202,434). In response, the applicants have reviewed those references in detail and believe that the present invention is patentable thereover for the reasons to be discussed hereinbelow.

The present invention relates to a method and apparatus for introducing a ripening agent into the conditioned air of a mobile container refrigeration system and for controlling the process by selectively turning on the ripening process and then, after a period of time, turning off the process and flushing the system of any remaining ripening agent. That is, at the end of the ripening cycle a fresh air

exchanger is automatically activated to vent the container air ripening agent to ambient and replace the vented air with outdoor air.

The Badalament reference shows a similar mobile ripening container wherein its refrigeration system includes a pair of air delivery plenums that run along side the side walls of a mobile container in abutting contact with a portion of the cargo load. That reference also shows a gas generator 116 for dispensing ethylene gas in the plenums. However, the Badalament reference does not show or suggest either 1) “a fresh air exchanger unit which is normally in a closed condition to retain the conditioned air within said container during said ripening cycle and to exchange conditioned air with ambient air when placed in an open condition at the conclusion of said ripening cycle” or 2) “control means for activating the gas generator at the beginning of the ripening cycle and to place the fresh air exchanger unit in an open condition for a given period of time to vent the ripening agent from said container at the end of said ripening cycle”. In this regard, the Examiner has said that Badalament does include “a fresh air exchanger unit in the form of the rear doors (column 6, line 45)”. The applicants respectfully disagree and contend that such doors, which are provided mainly for the purpose of loading and unloading cargo, clearly do not comprise a fresh air exchanger as recited in the applicant’s claim 9. In this regard, although the doors may be in a “closed condition to retain the conditioned air within said container during said ripening cycle”, they clearly would not act “to exchange conditioned air with ambient air when placed in an open condition at the conclusion of said ripening cycle” as recited in applicant’s claim 9.

The Examiner admits that Badalament et al does recite a control means for the fresh air exchanger but states that Briscoe Jr. et al. “teaches a mobile container device comprising a control means for a fresh air exchanger, gas generator and fans (Fig. 2, #5; column 8, lines 12-63)”. To this, the applicants also respectfully disagree.

The Briscoe reference describes a container system with apparatus for controlling the humidification therein. This is accomplished by the flow of a fluid from a reservoir 6 to a manifold 6, which is controlled by a control 5 in response to

data received from the container 3 by way of the data line 7. Thus, the controller 5 controls operation of the humidification system 200 to activate and deactivate the humidification system 200 in accordance with the desired humidity level in the container 3.

Although the Briscoe et al. reference provides in column 8, lines 51 and after that “in addition, controller 5 may be configured to control systems necessary to perform the functions necessary to supply, maintain and manage other atmospheric components, such as nitrogen, oxygen, carbon dioxide, ethylene, etc, temperature and/or electrical power or independently configured to control one or more functions such as humidity in combination with one or more other controllers to control other functions, such that the desired atmosphere in an environment is achieved and maintained for the perishable goods”, it does not show or suggest how the other functions may be controlled. In this regard, the applicants strongly disagree with the Examiners conclusion that “Briscoe Jr. et al teach a mobile container device comprising a control means for a fresh air exchanger, gas generator, and fans”.

Even assuming, arguendo, that the features of Briscoe Jr. et al were incorporated with the Badalament reference, it would most likely result in a system wherein the container of Badalament would include a humidification system that was controlled as shown and described in Briscoe Jr. et al and would clearly not include a fresh air exchanger unit (which is not shown in either of the references), nor “a control means for activating the gas generator at the beginning of a ripening cycle and to place the fresh air exchanger unit in an open condition for a given period of time to vent the ripening agent from said container at the end of said ripening cycle”. The applicants believe that it is only with hindsight that one skilled in the art may find it obvious to incorporate the features of Briscoe Jr. et al in the Badalament et al reference to obtain the applicant’s invention.

In respect to dependent claims 13 and 14, although Briscoe Jr. et al shows a mobile container device including drains in the floor, that reference does not, either by itself or in combination with the other cited reference, include “control means for placing the drain means in a closed position wherein moisture is maintained within

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the container during a ripening cycle and an open position wherein moisture in the container is released to the surrounding atmosphere". For the same reasons discussed hereinabove with respect to Briscoe Jr. et al, these control functions are not shown nor suggested by any of the references taken individually or in combination.

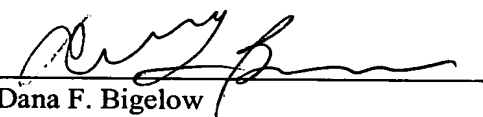
For the reasons discussed hereinabove, the applicants believe that the claims, as amended, are patentably distinctive over the cited references. A reconsideration of the Examiner's rejection and a passing of the case to issue is therefore respectfully requested.

If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicant's representative at the telephone number below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

WALL MARJAMA & BILINSKI LLP

By:   
Dana F. Bigelow  
Reg. No. 26,441

DFB/cmh  
Telephone: (315) 425-9000

Customer No.: 20874